Shortly after the last case was decided it was held in *Atkin* v. *Kansas* (1903) 191 U. S. 207, that a Kansas statute essentially similar to that considered in *People* v. *Road Construction Co.* infringed the liberty neither of the city nor of those dealing with it. In 4 COLUMBIA LAW REVIEW 127 it was pointed out that while in that decision the federal Supreme Court properly disposed of the question of the abridgment of contractual freedom, the results reached in the New York cases might still be supported upon the home-rule principle of the New York Constitution as laid down in *People* v. *Coler*, supra.

Under these circumstances, a further expression of the Court of Appeals upon the problems involved in the two cases mentioned is of interest. The court went out of its way to discuss the question in the recent case of *Ryan* v. *New York* (1904) 177 N. Y. 271. In that case a workman employed directly by the defendant city, sued for the difference between the wages at which he had been hired and the prevailing rate during a period extending over several years. The court denied a recovery, holding that by accepting the lower wage-rate the plaintiff had waived his rights, but in an elaborate opinion PARKER, C. J., proceeded to uphold the constitutionality of the statute involved, quoting at length, with approval, from *Atkin* v. *Kansas*. The decision in *People* v. *Coler* is disposed of on the ground that there the statute in question interfered with liberty of contract between municipal contractors and their employees. Notwithstanding this perfunctory attempt to distinguish the cases a careful reading of the two decisions leads irresistibly to the conclusion that they are utterly irreconcilable. When the prevailing opinion in *Ryan* v. *New York* adopts the reasoning of HARLAN, J., in *Atkin* v. *Kansas*, and almost in the same breath attempts to differentiate *People* v. *Coler* in the way above noted, it overlooks the fact, emphasized in the very language which it cites from the Federal court and clearly pointed out by O'BRIEN, J., in his dissenting opinion (p. 282), that if the power of the legislature to prescribe the terms upon which a municipality must contract be once conceded as to the city, it is a necessary corollary that no one, whether contractor or laborer, is entitled as a part of his liberty to contract with the city upon any other terms.

With the above distinction eliminated, the constitutional problems presented in *People* v. *Coler*, *People* v. *Road Construction Co.* and *Ryan* v. *New York*, are identical. If *Atkin* v. *Kansas* was correctly decided, and its reasoning seems unanswerable, only one question was properly involved. Justice O'BRIEN rightly conceives it: Does the home rule principle in the New York Constitution guarantee to cities the right to make contracts upon their own terms. By an obvious change of mind on the part of one judge, the view of the minority in *People* v. *Road Construction Co.* has become that of the majority in the present decision and the question is answered in the negative.

JURISDICTION OF EXECUTIVE OFFICERS OVER CLAIMS OF CITIZENSHIP. —Under the Chinese Exclusion Acts Congress has enacted that "... the collector [of customs] shall in person decide all questions in dispute with regard to the right of any Chinese passenger

to enter the United States, and his decision shall be subject to review by the Secretary of the Treasury and not otherwise." See U. S. Comp. St. 1901 p. 1310, § 12. A Chinese person, seeking admission into the United States on the ground that he was a citizen, was excluded by an immigration officer acting under the above statute, who decided that he was not a citizen and hence had no right to enter. He thereupon applied to a United States court for a writ of habeas corpus, but on its return the court held that it had no jurisdiction to review the decision of the collector; that Congress had vested that power in the Secretary of the Treasury alone; and in so doing had not deprived the petitioner of his liberty without due process of law. In re *Sing Tuck* (C. C., N. D., N. Y. 1903) 126 Fed. 386. This result is somewhat startling. Under the decision a citizen may be deprived of his liberty by an executive officer until his status can be determined. On appealing for a judicial determination of his citizenship the best he gets is the right of appeal to other executive officers. If their decision is adverse to his claim he is deported from the country. Assuming that the officers have erred, and the contingency is certainly possible, we have the case of a citizen deprived of all the privileges of citizenship, subjected to the penalty of banishment,—a penalty which could only be imposed upon him as punishment for a crime,—and that without a judicial trial. Under the division of powers as laid down in the Constitution the question of citizenship seems essentially a judicial one. If the citizenship of a Chinese person may be determined by the executive department, that of every other person coming to or already in the country may be so determined. The rights at stake seem entirely too fundamental to be so treated. Nor is the matter mended by calling these officers quasi-judicial. Under the Constitution judicial questions belong to the judiciary, and executive officials cannot be vested with exclusive jurisdiction over them by merely calling them quasi-judicial.

Of direct authority on the question there seems to be none. The case of *Gonzales* v. *Williams* (1904) 192 U. S. 1, decided a month later, seems at first sight to militate against this decision, but the cases differ in an essential particular. Gonzales, a Porto Rican, was denied admission by the bureau of immigration on the ground that she was an indigent alien. She claimed that being a Porto Rican she was not an alien. The fact that determined the inspector's jurisdiction was alienage. The court held Gonzales was not an alien, therefore the inspector had no jurisdiction to act. In the principal case, however, the jurisdictional fact was Chinese personality. The statute gave the inspector the right to act in the case of all Chinese persons whether citizens or aliens. Therefore, the question was not one of jurisdiction under the statute, but of the constitutionality of the statute. The nearest approach to direct authority is *Chin Bak Kan* v. *U. S.* (1902) 186 U. S. 193. The facts were on all fours with the principal case except that the question of citizenship was decided in the first instance by a commissioner of the court, and from his decision the right was given to appeal to the courts. This right of appeal was dwelt on by the court and seems a vital distinction. It is true that the court says in referring to *U. S.* v. *Wong Kim Ark* (1898) 169 U. S. 649; that Congress may empower a United States com-

missioner to determine the various facts on which citzenship depends, but under the circumstances they evidently mean that a commissioner may determine the facts in the first instance. This conclusion is strengthened by the fact that in the Wong Kim Ark case the court took jurisdiction and reversed the decision of the commissioner. It may be said that there the court was deciding the question of law as to whether or not a person born in this country of Chinese parents was a citizen, while here the issue is a question of fact. But one is a judicial question within the meaning of the Constitution as well as the other. If citizenship is a judicial question at all, the executive department has not the constitutional right to determine exclusively either the law or the facts upon which the claim thereto is based.

INTERPRETATION OF A CHARTER EXEMPTING A CORPORATION FROM TAXATION.—The taxing power vested in the legislatures of the different States is of such vital importance to the life of the State that any Act of a legislature impairing it is examined closely by the courts, and the legislative intent must be very plainly expressed or it will not be enforced. *Ins. Co.* v. *Tenn.* (1896) 161 U. S. 174. The legislature has such power, however, and may, with certain restrictions, exempt from taxation whatever it chooses; and such exemption may be perpetual provided it is given by contract. Consequently an exemption contained in the charter of a corporation will give to the corporation immunity from taxation for the life of the charter, a charter being a contract. *Dartmouth College* v. *Woodward* (U. S. 1819) 4 Wheat. 518. Applying this rule of strict construction it is held that a statute exempting the property of manufacturing corporations from taxes exempts only such property as is used in the business of manufacturing. *State* ex rel. *R. R.* v. *Dist. Court* (1897) 68 Minn. 242; *Commonwealth* v. *Mahoning Co.* (1889) 129 Pa. St. 360. And a clause exempting property from taxation is held not to exempt it from assessments for local improvements. *Ford* v. *Land Co.* (1897) 164 U. S. 662. It would seem then that where there is a reasonable doubt as to the intention of the legislature, the exemption should be held not to include the tax in dispute.

The United States Supreme Court has recently interpreted an exemption of this character, and although it expressly states that it recognizes this rule of strict construction, yet in the result reached it seems not to have applied it consistently. The exemption was contained in the charter of a bank and was from "any tax" upon the "capital of said bank." The tax imposed, the collection of which was opposed by the bank, was a license tax imposed upon all banks varying with the amount of the capital of the bank. It was held by a divided court, three Justices dissenting, that such a tax came within the exemption and that therefore the bank was not liable. *Citizens' Bank* v. *Parker* (1904) 192 U. S. 73. The prevailing opinion held that the legislature in saying "any" tax, could not have had in mind any distinction between a license tax and a property tax and that both were included, and, further, that any tax which was ultimately paid out of the capital was a tax on the capital. The dissenting